



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Berkshire Computer Products

File: B-246337

Date: December 18, 1991

Kevin D. Parsons, Esq., for the protester,
Jonathan H. Kosarin, Esq., and William R. Sheehan, Esq.,
Department of the Navy, for the agency,
Catherine M. Evans, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where original protest basis for challenging agency's rejection of proposal is rendered academic by agency agreement with protester, and protester raises new challenge to rejection in comments on agency report, new protest ground is untimely because not filed within 10 days after basis of protest was known.

DECISION

Berkshire Computer Products protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N00140-91-R-3155, issued by the Department of the Navy for an automated data storage array.

We dismiss the protest.

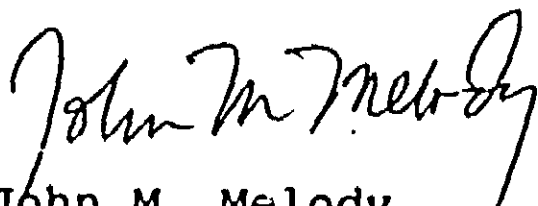
The RFP required offerors to propose a Digital Equipment Corporation (DEC) model SA550-UA storage array or equal. In its rejection letter to Berkshire, the Navy offered two bases for finding its proposal technically unacceptable: first, Berkshire's offered storage array did not appear to have the required expansion capability, and second, the proposal did not indicate that the system's disk drives were compatible with the Navy's diagnostic software, VAXsimPLUS, as are the DEC disk drives. Berkshire's protest challenged the Navy's determination that its offered system did not have the required expansion capability, but did not address the Navy's finding concerning the system's VAXsimPLUS compatibility.

The Navy's report on the protest stated that the contracting officer reviewed Berkshire's allegations concerning the expansion capabilities of its proposed system, and

determined that Berkshire's system in fact meets the RFP expansion requirement. However, the contracting officer confirmed his finding that Berkshire's proposal did not establish VAXsimPLUS compatibility, and concluded that Berkshire's proposal remained technically unacceptable.

The Navy's determination that Berkshire's system meets the RFP expansion requirements renders Berkshire's protest on that issue academic. In its comments on the agency report, however, Berkshire for the first time asserts that the Navy's finding concerning the system's compatibility with VAXsimPLUS was in error, and that the Navy should have afforded it an opportunity to resolve the matter through discussions. This allegation is untimely. A protest must be filed within 10 working days after the basis of the protest is known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the new allegations must independently satisfy our timeliness requirements; our Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. EER Sys. Corp., 69 Comp. Gen. 207 (1990), 90-1 CPD ¶ 123. Since Berkshire was informed by the Navy's rejection letter, received on October 10, that its offered system did not appear to be compatible with VAXsimPLUS, its challenge to that determination in its December 11 comments is untimely.

The protest is dismissed.


John M. Melody
Assistant General Counsel